

Petition for Writ of Mandamus Denied and Memorandum Opinion filed February 17, 2011.



In The

Fourteenth Court of Appeals

NO. 14-11-00052-CR

IN RE MICHAEL WAYNE BARNES, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
183rd District Court
Harris County, Texas
Trial Court Cause No. 1072414**

MEMORANDUM OPINION

On January 20, 2011, relator filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (Vernon 2004); *see also* Tex. R. App. P. 52. Relator complains that respondent, the Honorable Vanessa Velasquez, presiding judge of the 183rd District Court of Harris County, has failed to rule in a reasonable time on his motion for DNA testing and appointment of counsel.

To be entitled to mandamus relief, a relator must show that he has no adequate remedy at law to redress his alleged harm, and what he seeks to compel is a ministerial act, not involving a discretionary or judicial decision. *State ex rel. Young v. Sixth Judicial Dist. Court of Appeals at Texarkana*, 236 S.W.3d 207, 210 (Tex. Crim. App. 2007) (orig.proceeding). Consideration of a motion that is properly filed and before the court is a ministerial act. *State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex. Crim. App.1987) (orig.proceeding) (op. on reh'g). A relator must establish the trial court (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed to do so. *In re Keeter*, 134 S.W.3d 250, 252 (Tex. App. -- Waco 2003, orig. proceeding). A relator must show that the trial court received, was aware of, and asked to rule on the motion. *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App. -- Amarillo 2003, orig. proceeding). Filing something with the district clerk's office does not mean the trial court is aware of it; nor is the clerk's knowledge imputed to the trial court. *Id.* at n. 2.

Relator has not provided file-stamped copies of his motion demonstrating it is actually pending in the trial court. Absent a showing the trial court is aware of and has been asked to rule on his motion, relator has not established his entitlement to the extraordinary relief of a writ of mandamus. Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Brown, Boyce, and Jamison.

Do Not Publish — Tex. R. App. P. 47.2(b).